

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2553

IN THE MATTER OF:

Served May 11, 1984

Application of CALL-A-MESSENGER, )  
INC., to Transfer Authorizations )  
under Special Certificate No. 1 to )  
TRANSPORTATION CONSULTANTS, INC. )  
t/a AIR COURIER GROUND TRANSPOR- )  
TATION SERVICES )

Case No. AP-84-20

By application filed April 25, 1984, Call-A-Messenger, Inc., an Arizona corporation, seeks approval to transfer to Transportation Consultants, Inc. t/a Air Courier Ground Transportation Services, another Arizona corporation, the following described 1/ authorizations to operate under WMATC Special Certificate of Public Convenience and Necessity No. 1. Said authorizations were issued pursuant to Regulation No. 70.

(1) SP-55-01, authorizing charter operations pursuant to contract to transport passengers and their baggage between Dulles International Airport and Washington National Airport, and between the said airports and hotels and motels in the Metropolitan District, restricted to the transportation of United Airlines flight officers and/or flight attendants, and restricted against transportation solely within the Commonwealth of Virginia;

(2) SP-55-02, authorizing charter operations pursuant to contract to transport passengers and their baggage between Dulles International Airport and Washington National Airport, and between the said airports and points in the District of Columbia, restricted to the transportation of flight officers and attendants employed by Pan American World Airways, Inc.;

(3) SP-55-03, authorizing charter operations pursuant to contract to transport passengers and their baggage between Dulles International Airport and Washington National Airport, and between the said airports and Andrews Air Force Base, restricted to the transportation of flight attendants employed by Trans World Airlines;

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1/ The descriptions set forth in the text are summarizations of the pertinent authorities rather than verbatim recitals. In each case, transportation between Dulles International Airport and Washington National Airport is required to be rendered via a route traversing the District of Columbia.

(4) SP-55-05, authorizing charter operations pursuant to contract to transport Trans World Airlines flight deck crews between Dulles International Airport and Washington National Airport, between the said airports and hotels located in the District of Columbia, and between the said airports and hotels and Andrews Air Force Base;

(5) SP-55-06, authorizing charter operations pursuant to contract to transport American Airlines flight attendants and flight deck crews between the same combinations of points as indicated in SP-55-05, above; and

(6) SP-55-08, authorizing charter operations pursuant to contract to transport British Airways flight attendants and flight deck crews between Dulles International Airport and Washington National Airport, between the said airports and points in the District of Columbia, and between the said airports and points in the District of Columbia and Andrews Air Force Base.

Separate contracts between the transferor and United Airlines, Pan American World Airways, Trans World Airlines, American Airlines, and British Airways, respectively, underlie the special authorizations sought to be transferred. Attached to the transfer application is a series of separate agreements whereby the transferor assigns each of the respective airline contracts to the transferee. Each assignment agreement in the series relates to a particular airline contract and each is countersigned by the involved airline as evidence of the airline's approval and consent to the assignment of the underlying contract. The several assignment agreements were executed during the period from February 7, 1984, to April 19, 1984.

Each assignment agreement included with the application alludes to a purchase agreement that apparently has been executed by and between the transferor and transferee whereby the former sells to the latter its assets and property in Washington, D.C., Maryland and Virginia. Unfortunately, this master purchase agreement is not included as part of the transfer application. There is nothing in the application which indicates the terms of sale and the consideration involved in the transaction.

The transfer application contains no information of substance about the transferor. We note from the transferor's 1982 Annual Report, however, that it has the same office address and the same directorate as the transferee. This indicates that the transaction sought to be approved may be in the nature of a corporate reorganization.

The transferee's balance sheet and income statement for the period ending September 30, 1983, are included with the application. The balance sheet shows current assets of \$70,370, current liabilities of \$410,969, and a negative surplus of \$250,210. The income statement shows a net loss of \$211,349 for the year ending on September 30, 1983.

Title II, Article XII, Section 12(b) of the Compact governs transfer applications such as the one at issue herein. It provides that:

If, after hearing held upon reasonable notice, the Commission finds that, subject to such terms, conditions, and modifications as it shall find to be necessary, the proposed transaction is consistent with the public interest, it shall enter an appropriate order approving and authorizing such transaction as so conditioned.

In determining the public interest, the Commission considers, among other factors, the fitness of the acquiring carrier, the benefits and costs of the transaction to the riding public, the fairness of the purchase price and the resulting competitive balance of the industry. The transferee bears the burden of proof on all these issues.

We note, based on the financial data submitted, that the transferee's finances appear to be suspect. Its current debt to current asset ratio of approximately 5.2 to 1, coupled with its large net operating loss for the 12-month period ending last September, raises a serious issue of the transferee's financial stability. This issue is particularly troublesome inasmuch as there is no information concerning the precise nature and purpose of the proposed transaction, nor any indication of exactly what additional financial obligations will be imposed on the transferee thereby. The transferee must be prepared to present proof of its viability and show (by means of a guarantee from a more solvent entity, or otherwise) that it can meet its financial obligations.

Further, we note the existence in this case of an issue of first impression concerning the proper interpretation of the terms and conditions set forth in Special Certificate of Public Convenience and Necessity No. 1, which is the master certificate governing all of the authorizations sought to be transferred in this proceeding. Special Certificate No. 1 specifically provides that "The authority granted herein is not transferable by sale or otherwise." This is the first occasion on which we have been asked to approve a transfer of operating rights issued under Special Certificate No. 1. We are therefore presented with the question whether the anti-transfer condition imposed on Special Certificate No. 1 is an absolute prohibition of transactions such as that proposed herein.

The anti-transfer condition imposed on the master certificate was intended to prevent the transfer of underlying transportation contracts where the party purchasing the transportation was unaware of or did not approve of the transfer of the contract to a new carrier. It appears that the evil designed to be prevented by the anti-transfer condition is not present in this case because all of the contracting

airlines have specifically approved the assignment of their contracts to the transferee. Moreover, as noted earlier, this transaction may be nothing more than a corporate reorganization whereby there will be no noticable change in the service being provided to the contracting airlines.

After the transferee has had an opportunity to develop a factual record at an evidentiary hearing, we will be in a position properly to assess the considerations of administrative economy and efficiency that appear to be implicated in this case. Should we dismiss this application and, in effect, require the transferee to file separate applications to serve the contracting airlines under the procedures established by Regulation No. 70, with the resulting expense and delay that such an action would entail for all parties concerned? Or, alternatively, should an exception to the anti-transfer condition be created by way of interpretation to permit the transfer of Special Certificate No. 1 authorities in certain circumstances? The transferee should be prepared to present evidence relevant to these issues at the hearing.

THEREFORE, IT IS ORDERED:

1. That this application is hereby scheduled for public hearing on June 19, 1984, at 9:30 a.m., in the Hearing Room of the Commission, Room 314, 1625 I Street, N.W., Washington, D.C. 20006.

2. That Transportation Consultants, Inc. t/a Air Courier Ground Transportation Services is hereby made a coapplicant and a party to this proceeding.

3. That Transportation Consultants, Inc. t/a Air Courier Ground Transportation Services is hereby directed to publish once, in a newspaper of general circulation in the Metropolitan District, and to post conspicuously and continuously in each of its vehicles through the date of public hearing, notice of this application and hearing in the form prescribed by the staff of the Commission no later than May 17, 1984, and to produce at the hearing an affidavit of publication.

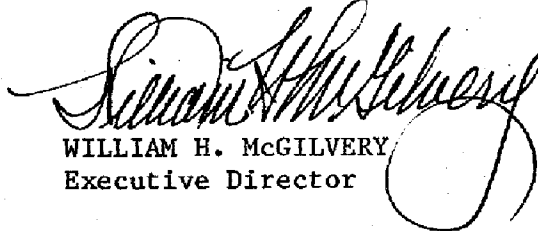
4. That any person desiring to protest shall file a protest in accordance with Commission Rule No. 14, or any person desiring to be heard shall so notify the Commission, in writing, no later than June 4, 1984, and simultaneously serve a copy of said protest or notice on counsel for applicant, John M. Ballenger, Esquire, 123 South Royal Street, Alexandria, Va. 22314.

5. That Transportation Consultants, Inc. t/a Air Courier Ground Transportation Services is hereby directed to file with the Commission no later than June 11, 1984, five (5) copies each of the contract between transferor and transferee and a statement projecting revenue and revenue deductions for a 12 month-period, attributable to operations under the authorizations to be transferred, produce the

original thereof at the public hearing, and serve a copy thereof on each party of record as of June 4, 1984.

6. That Transportation Consultants, Inc. t/a Air Courier Ground Transportation Services is hereby assessed \$400 pursuant to Title II, Article XII, Section 19 of the Compact and directed to deliver said amount to the office of the Commission, Suite 316, 1625 I Street, N.W., Washington, D.C. 20006, no later than June 11, 1984, at 12:00 noon.

FOR THE COMMISSION:



WILLIAM H. MCGILVERY  
Executive Director